

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition Nos. 288/TT/2019, 300/TT/2019,  
301/TT/2019 and 305/TT/2019**

**Coram:**

**Shri P.K. Pujari, Chairperson  
Dr. M.K. Iyer, Member  
Shri I. S. Jha, Member**

**Date of Order : 06.11.2019**

**Petition No. 288/TT/2019**

**In the matter of:**

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for (i) Revision of Transmission Tariff for 2001-04 tariff period, 2004-09 tariff period, 2009-14 tariff period (ii) Truing-up of transmission tariff for 2014-19 tariff period and (iii) Determination of transmission tariff for 2019-24 tariff period for LILO of 400 kV S/C Chamera-1 Kishenpur transmission line at Chamera-II under transmission system associated with Chamera HEP Stage-II Transmission System in Northern Region.

**And in the matter of:**

Power Grid Corporation of India Limited,  
'SAUDAMINI', Plot No-2,  
Sector-29, Gurgaon – 122001 (Haryana)

**.... Petitioner**

**Vs**

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,  
Vidyut Bhawan, Vidyut Marg,  
Jaipur- 302 005.
2. Ajmer Vidyut Vitran Nigam Ltd.,  
132kV,GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.



3. Jaipur Vidyut Vitran Nigam Ltd.,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
4. Jodhpur Vidyut Vitran Nigam Ltd.,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
5. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House Complex Building-II  
Shimla-171 004
6. Punjab State Power Corporation Limited,  
Thermal Shed Tia, Near 22 Phatak,  
Patiala-147 001.
7. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula (Haryana)-134 109
8. Power Development Department,  
Government of Jammu and Kashmir,  
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Ltd.,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226 001.
10. Delhi Transco Ltd.,  
Shakti Sadan, Kotla Road,  
New Delhi-110 002.
11. BSES Yamuna Power Ltd.,  
Shakti Kiran Building,  
Karkardooma, Delhi-110 092.
12. BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi.
13. Tata Power Delhi Distribution Ltd.,  
33 kV Sub-station, Building  
Hudson Lane  
Kingsway Camp  
North Delhi-110009



14. Chandigarh Administration,  
Sector-9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun.
16. North Central Railway,  
Allahabad
17. New Delhi Municipal Council,  
Palika Kendra,  
Sansad Marg,  
New Delhi-110 002.

.....Respondents

**For Petitioner** : Shri M. G. Ramachandran, Senor Advocate, PGCIL  
Ms. Swapna Seshadri, Advocate, PGCIL  
Ms. Ritu Apurva, Advocate, PGCIL  
Shri S.S. Raju, PGCIL  
Shri A. K. Verma, PGCIL  
Shri V. P. Rastogi, PGCIL  
Shri Nitish Kumar, PGCIL  
Shri Amit Yadav, PGCIL  
Shri Anshul Garg, PGCIL  
Shri B. Dash

**For Respondents** : Shri R. B. Sharma, Advocate, BRPL  
Shri Mohit Mudgal, Advocate, BYPL  
Shri Sanya Sood, Advocate, BYPL

**Petition No. 300/TT/2019**

**In the matter of:**

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for (i) Revision of Transmission Tariff for 2001-04 tariff period, 2004-09 tariff period, 2009-14 tariff period (ii) Truing-up of transmission tariff for 2014-19 tariff period and (iii) Determination of transmission tariff for 2019-24 tariff period for 400 kV Biharsharif-Sasaram-Sarnath



Transmission line along with associated bays under Eastern-Northern inters Regional HVDC Transmission system in Eastern Region.

**And in the matter of:**

Power Grid Corporation of India Limited,  
'SAUDAMINI', Plot No-2,  
Sector-29, Gurgaon – 122001 (Haryana)

.... **Petitioner**

**Vs**

1. Bihar state power (holding) Company Ltd.  
Vidyut Bhawan, Bailey Road  
Patna-800 001
2. West Bengal State Electricity Distribution Company Limited  
Bidyut Bhawan, Bidhan Nagar  
Block DJ, Sector-II, Salt Lake City  
Calcutta- 700 091
3. Grid Corporation of Orissa Ltd.  
Shahid Nagar, Bhubaneshwar- 751 007
4. Jharkhand State Electricity Board  
In front of Main Secretariat  
Doranda, Ranchi - 834002
5. Damodar Valley Corporation  
DVC Tower, Maniktala  
Civic Centre, VIP Road, Calcutta- 700 054
6. Power Department  
Government of Sikkim,  
Gangtok- 737 101

.....**Respondents**

**For Petitioner** : Shri S.S. Raju, PGCIL  
Shri A. K. Verma, PGCIL  
Shri Amit Yadav, PGCIL  
Shri Anshul Garg, PGCIL  
Shri B. Dash, PGCIL

**For Respondents** : Shri R. B. Sharma, Advocate, BSP(HCL)



**In the matter of:**

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for (i) Revision of Transmission Tariff for 2001-04 tariff period, 2004-09 tariff period, 2009-14 tariff period (ii) Truing-up of transmission tariff for 2014-19 tariff period and (iii) Determination of transmission tariff for 2019-24 tariff period for Dehri-Karamnasa Transmission System in Eastern Region.

**And in the matter of:**

Power Grid Corporation of India Limited,  
'SAUDAMINI', Plot No-2,  
Sector-29, Gurgaon – 122001 (Haryana)

**.... Petitioner**

**Vs**

1. Bihar state power (holding) Company Ltd.  
Vidyut Bhawan, Bailey Road  
Patna-800 001
2. West Bengal State Electricity Distribution Company Limited  
Bidyut Bhawan, Bidhan Nagar  
Block DJ, Sector-II, Salt Lake City  
Calcutta- 700 091
3. Grid Corporation of Orissa Ltd.  
Shahid Nagar, Bhubaneshwar- 751 007
4. Jharkhand State Electricity Board  
In front of Main Secretariat  
Doranda, Ranchi - 834002
5. Damodar Valley Corporation  
DVC Tower, Maniktala  
Civic Centre, VIP Road, Calcutta- 700 054
6. Power Department  
Govt. of Sikkim, Gangtok- 737 101

**.....Respondents**



**For Petitioner** : Shri S.S. Raju, PGCIL  
Shri A. K. Verma, PGCIL  
Shri Amit Yadav, PGCIL  
Shri Anshul Garg, PGCIL  
Shri B. Dash, PGCIL

**For Respondents** : Shri R. B. Sharma, Advocate, BSP(HCL)

**Petition No. 305/TT/2019**

**In the matter of:**

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for (i) Revision of Transmission Tariff for 2001-04 tariff period, 2004-09 tariff period, 2009-14 tariff period (ii) Truing-up of transmission tariff for 2014-19 tariff period and (iii) Determination of transmission tariff for combined asset of (i) 1x500 MW HVDC back to back station at Sasaram and (ii) Associated AC Switchyard at Sasaram and Allahabad and auxiliary system including 400 kV Sarnath Allahabad line with associated bays etc. under Eastern Northern Inter-regional HVDC Transmission System in Eastern Region.

**And in the matter of:**

Power Grid Corporation of India Limited,  
'SAUDAMINI', Plot No-2,  
Sector-29, Gurgaon – 122001 (Haryana)

.... **Petitioner**

**Vs**

1. Bihar state power (holding) Company Ltd.  
Vidyut Bhawan, Bailey Road  
Patna-800 001
2. West Bengal State Electricity Distribution Company Limited  
Bidyut Bhawan, Bidhan Nagar  
Block DJ, Sector-II, Salt Lake City  
Calcutta- 700 091
3. Grid Corporation of Orissa Ltd.  
Shahid Nagar, Bhubaneshwar- 751 007



4. Jharkhand State Electricity Board  
In front of Main Secretariat  
Doranda, Ranchi - 834002
5. Damodar Valley Corporation  
DVC Tower, Maniktala  
Civic Centre, VIP Road, Calcutta- 700 054
6. Power Department  
Govt. of Sikkim, Gangtok- 737 101

.....Respondents

**For Petitioner:** Shri S.S. Raju, PGCIL  
Shri A. K. Verma, PGCIL  
Shri Amit Yadav, PGCIL  
Shri Anshul Garg, PGCIL  
Shri B. Dash, PGCIL

**For Respondents :** Shri R. B. Sharma, Advocate, BSP(HCL)

### **ORDER**

The Petitioner, Powergrid Corporation of India Limited (PGCIL), has filed Petition Nos. 288/TT/2019, 300/TT/2019, 301/TT/2019 and 305/TT/2019 for (i) revision of transmission tariff for the period 2001-04, 2004-09 and 2009-14, (ii) truing up of tariff for 2014-19 period and, (iii) determination of tariff for 2019-24 period in respect of the assets given in the respective petitions. The Petitioner has prayed for revision of tariff of the period 2001-04, 2004-09 and 2009-14 pursuant to the liberty granted vide order dated 18.1.2019 in Petition No. 121 of 2017 and truing up of the tariff of the 2014-19 period and determination of tariff for the 2019-24 period as per Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 2014 Tariff Regulations) and Central Electricity Regulatory



Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) respectively. The details of the assets covered in the present petitions are as follows:-

Sl. No.	Petition No.	Asset(s)
1.	288/TT/2019	LILLO of 400 kV/SC Chamera-1 Kishenpur transmission line at Chamera-II under Transmission System associated with Chamera HEP Stage-II Transmission System in Northern Region.
2.	300/TT/2019	For 400 kV Biharsharif-Sasaram-Sarnath Transmission line along with associated bays under Eastern-Northern inters Regional HVDC Transmission system in Eastern Region.
3.	301/TT/2019	For Dehri-Karamnasa Transmission System in Eastern Region.
4.	305/TT/2019	For combined asset of (i) 1x500 MW HVDC back to back station at Sasaram (DOCO 01.12.2002 and (ii) Associated AC Switchyard at Sasaram & Allahabad and auxiliary system including 400 kV Sarnath Allahabad line with associated bays etc (DOCO 01.12.2002) under Eastern Northern Inter-regional HVDC Transmission System in Eastern Region.

### **Background Facts**

2. NTPC preferred appeals before the Appellate Tribunal for Electricity (APTEL) being aggrieved with the methodology adopted by the Commission in its tariff orders for the period 2001-04 and 2004-09. The said appeals of NTPC were partly allowed by the Appellate Tribunal in terms of judgment dated 22.1.2007 in Appeal No. 81 of 2005 and other related appeals and judgment dated 13.6.2007 in Appeal No. 139 of 2006 (hereinafter referred to as the “Appellate Tribunal’s Judgments’) pertaining to the generating stations of NTPC on the following issues:-





- (a) Computation of interest on loan;
- (b) Consequences of Re-financing of loan;
- (c) Depreciation as deemed repayment;
- (d) Admissibility of depreciation upto 90% of the value of assets;
- (e) Consideration of maintenance of spares for working capital; and
- (f) Depreciation of assets.

3. Aggrieved with the Appellate Tribunal's Judgments, the Commission and certain other beneficiaries approached Hon'ble Supreme Court by way of Civil Appeals. Soon after the Appellate Tribunal's Judgments, the Petitioner filed Petition No. 121 of 2007 under Sections 64(5) and 79 of the Electricity Act, 2003 read with Regulations 110, 111 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as the "1999 Regulations") seeking revision of tariff for the period 2001-04 and 2004-09 in terms of the Appellate Tribunal's Judgments. The Petitioner's prayer in the accompanying I.A. No.5/2008 was as under.

"..... re-determine the transmission tariff for various transmission systems for block 2001-04 and block 2004-09 for various assets including the issue of refinancing of loans, as per the judgement dated 13.6.2017 of appellate Tribunal in Appeal Nos.94 & 96 of 2005, Nos.81 to 87, 89 to 93 of 2005 and Nos. 139-142, 144, 151 to 156, 207, 216 to 219, 239-240 of 2006 and 10, 11 & 23 of 2007."

4. As the appeals filed by the Commission and other beneficiaries against the Appellate Tribunal's Judgments were then pending adjudication before the Hon'ble Supreme Court, the Commission through its RoP dated 12.8.2008 in Petition No. 121 of 2007 adjourned the proceedings sine die with a liberty to the Petitioner to revive the



same as and when the Civil Appeals filed before the Hon'ble Supreme Court are decided.

5. The Hon'ble Supreme Court vide order dated 10.4.2018 dismissed the Civil Appeals filed by the Commission and other beneficiaries against Appellate Tribunal's Judgments observing that there is no merit in the said Appeals. Pursuant to the Hon'ble Supreme Court order dated 10.4.2018, the Commission vide order dated 18.1.2019 disposed of Petition No. 121 of 2007 directing the Petitioner to submit its claim in the light of Appellate Tribunal's Judgments alongwith true up petitions to be filed for the period 2014-19 in respect of the concerned transmission assets. Accordingly, the Petitioner has filed the instant petitions for revision of tariff of the 2001-04, 2004-09 and 2009-14 tariff periods and truing up of the 2014-19 tariff period besides determination of tariff for the 2019-24 tariff period.

6. By way of present petitions, the Petitioner has sought revision of transmission tariff for the period 2001-04 and 2004-09 on account of change in Interest on Loan (IOL) and Interest on Working Capital (IOWC) to the extent of revision in IOL and Maintenance Spares in terms of the Appellate Tribunal's Judgments. The Petitioner has further sought consequent revision in transmission tariff for 2009-14 period, truing up of transmission tariff for 2014-19 period and determination of tariff for 2019-24 period.

7. The respondents, BRPL and BSPHCL have filed their reply vide affidavits dated 4.10.2019 and 15.10.2019 respectively.



8. We have heard the learned senior counsel for the Petitioner and learned counsel for the respondents, BRPL and BSPHCL on the issue of re-opening of the tariff petitions in view of Appellate Tribunal's Judgments and applicability of doctrine of *functus officio*. Since the submissions and contentions of BRPL and BSPHCL are almost identical, we deal with them together in the subsequent paragraphs.

### **Analysis and decision**

9. Learned counsel for BRPL and BSPHCL has objected to the re-opening of the tariff of the transmission assets where final tariff has already been determined, on the ground that no appeal was filed by Petitioner against them and as such the orders of the Commission passed therein have attained finality. He contended that in Appeal No. 81 of 2006 and batch and in Appeal No. 139 of 2006 and batch there were in all 38 appeals filed by NTPC before the Appellate Tribunal for Electricity for their individual generating stations. He also contended that Appellate Tribunal's Judgments qua revision and modifications in tariff is the prerogative that is applicable in only 38 appeals of NTPC which went in appeals before the Appellate Tribunal and that privilege of Appellate Tribunal's Judgments cannot be applied across the board. Referring to the facts of one of the present petitions, namely, Petition No. 288/TT/2019, he submitted that orders dated 23.11.2015 in Petition No. 57 of 2003 for the tariff period 2001-04 and order dated 24.10.2006 in Petition No. 9 of 2006 for the tariff period 2004-09 and order dated 20.10.2010 in Petition No. 115 of 2010 for the tariff period 2009-14 have not been struck down by Appellate Tribunal for Electricity and as such they have attained finality. He



further submitted that for the reasons cited above, the revisions and modifications as sought to be effected in the present tariff petitions cannot be allowed.

10. Learned senior counsel for the Petitioner contended that they filed a Petition No. 121 of 2007 praying for revision of tariff for the year 2001-04 and 2004-09 based on the Appellate Tribunal's Judgments. He further contended that the question of challenging the order of the Commission before the higher forum arises only when they are aggrieved with any order of the Commission which is not the case here. He contended that Petition No. 121 of 2007 was filed in the year 2007 covering the true up issues with specific reference to the interpretation of Tariff Regulations as propounded in Appellate Tribunal's Judgments. He further contended that in no way they can be said to have been aggrieved by the Commission's order for the reason that Petition No. 121 of 2007 was deferred and adjourned sine die by the Commission vide ROP dated 12.8.2008 and finally vide order dated 18.1.2019 the Petitioner is permitted by the Commission to submit their claims separately in the light of Appellate Tribunal's Judgments alongwith trueing up petitions to be filed for the 2014-19 period in respect of concerned transmission assets.

11. We have examined the above contentions of the parties. It is apparent from the record that the Central Commission and other beneficiaries filed Civil Appeal No. 5622 of 2007 and batch before the Hon'ble Supreme Court against the judgment dated 22.1.2007 in Appeal No. 81 of 2005 and other related appeals and judgment dated 13.6.2007 in Appeal No. 139 of 2006 of Appellate Tribunal for Electricity. In the meantime, the Petitioner filed a Petition No. 121 of 2007 in the year 2007 for extending



the benefit of judgements dated 22.1.2007 and 13.6.2007 of the Appellate Tribunal in the case of appeals filed by NTPC, on the issue of (a) Computation of Interest on Loan, (b) Consequence of Refinancing of Loan, (c) Depreciation as Deemed Repayment, (d) Admissibility of Depreciation with specific reference to the interpretation of Tariff Regulations as propounded in Appellate Tribunal's Judgments. As the said appeals against the Appellate Tribunal's Judgments were then pending adjudication before Hon'ble Supreme Court, the Commission adjourned the proceedings sine die in Petition No. 121 of 2007 vide RoP dated 12.8.2008. The relevant portion of the ROP dated 12.8.2008 is extracted hereunder:-

"4. Request made by the learned counsel was allowed by the Commission. The application was adjourned *sine die*. The applicant may get the application revived after decision of the Hon'ble Supreme Court in the appeals pending"

This was done for the reason that the regulations as interpreted by Appellate Tribunal were under challenge before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 10.4.2018 dismissed Civil Appeal No. 5622 of 2007 and batch filed by the Commission and other beneficiaries. Thus, the Appellate Tribunal's Judgments attained finality. As the spirit of the regulations in question has authoritatively been interpreted in the Appellate Tribunal's Judgments, the Commission is duty bound to apply the regulations uniformly to all without any discrimination. Accordingly, on dismissal of the said appeals by the Hon'ble Supreme Court, the Commission disposed of Petition No. 121 of 2007 vide order dated 18.1.2019 permitting the Petitioner to submit their claims, wherever applicable, alongwith truing up petitions for the 2014-19 period.



“6. Considering the submissions of the learned counsel for the petitioner, we dispose of the present petition with the direction that the petitioner shall separately submit its claim in the light of the APTEL’s judgments dated 22.1.2007 and 13.6.2007 alongwith the truing up petitions wherever applicable to be filed for the period 2014-19 in respect of concerned transmission assets.”

It is well settled law that an order or judgment from which review and/or appeal is allowed but not preferred by the aggrieved party attains finality. The said principle cannot be applied to the instant petitions as during the pendency of Petition No.121 of 2007, the Petitioner was not in a position to take up other legal remedies available to it under the law. Thus, we do not agree with the contentions of learned counsel for BRPL and BSPHCL that the present petitions cannot be entertained as the final orders passed therein have attained finality. In our opinion, the present matter significantly differs with the settled law wherein uniform treatment based regulations as interpreted by higher Courts is required to be given effect to without any discrimination to meet the ends of justice. For these reasons, we reject the said contentions of BRPL and BSPHCL and hold that in the facts and circumstances of this case, the general law that an order or judgment from which review and/or appeal is allowed but not preferred by the aggrieved party attains finality is not applicable here.

12. Now we deal with the next contention of BRPL and BSPHCL that vide order dated 18.1.2019 in Petition No. 121 of 2007, the Commission allowed the Petitioner to file its claim during the truing up of tariff period 2014-19 without taking into consideration the legal aspects that there are two portions in a judgment, one is called procedural portion that is open for modifications or clarifications uninfluenced by the principle of functus officio while the substantive portion of the judgment is hit by doctrine functus officio. He



further contended that the Commission has since disposed of the tariff petitions, as such it ceases to have jurisdiction over the matter for revision of tariff petitions and has become functus officio. He relied on the order of Commission in Review Petition No. 92 of 2000 in Petition No. 24 of 2000 dated 24.4.2002 wherein the Commission rejected the prayer for modification or setting aside the orders in question with the observation that after passing the detailed order on 26.9.2000, the Commission became functus officio.

13. Learned senior counsel for the Petitioner contended that Petition No. 121 of 2007 was filed for allowing revision of tariff for the year 2001-04 and 2004-09 in terms of Appellate Tribunal's Judgments and it was disposed of by the Commission, on dismissal of Civil Appeals by the Hon'ble Supreme Court, directing the Petitioner to file its claim separately in the light of Appellate Tribunal's Judgments alongwith true up petitions wherever applicable to be filed for the 2014-19 period in respect of concerned transmission assets. He contended that the Commission has vast powers for revision of tariff in 1999 Regulations including Regulation 92 of the said regulations. Contending such, he referred to and relied on paragraphs 35 and 38 of the judgment of Hon'ble Supreme Court in the case of U.P. Power Corporation Limited Vs. National Thermal Power Corporation Limited reported in (2009) 6 SCC 235 wherein it was observed that the Commission has plenary power under Regulation 92 of 1999 Regulations which provides for revision of tariff and that Regulations 110 to 117 of 1999 Regulations confer upon the Commission extensive powers to be exercised by it in regard to the proceedings before it. Placing reliance on para 36 of the said judgment, he contended



that Hon'ble Supreme Court observed that having regard to the nature of jurisdiction of the Central Commission in a case of this nature, even principles of res judicata will have no application.

14. In addition to above, he cited the judgment of APTEL dated 14.8.2012 in the matter of Chhattisgarh State Power Distribution Company Limited Vs. Chhattisgarh State Power Generation Co. Ltd to contend that if in the main order an error has been committed by the State Commission by not following the Regulations without assigning any reasons, the same error cannot be perpetuated and is required to be corrected in the true up. Over and above this, he cited the APTEL's judgment dated 6.4.2017 in the case of Odisha Power Generation Corporation Limited Vs. Odisha Electricity Regulatory Commission to contend that in view of authoritative pronouncement of the Hon'ble Supreme Court in Tarini case, it is not possible to hold that the State Commission had become *functus officio* after approving the amended PPA vide order dated 27.4.2015. He further contended that Hon'ble APTEL in the said judgment further observed that the State Commission's regulatory jurisdiction cannot be avoided in this matter. The State Commission always retains its control over the PPA and can vary its terms and conditions if public interest so demands.

15. We have examined the above contentions of the parties and have also gone through the citations relied on by them. Learned counsel for BRPL and BSPHCL has contended that there are two parts in a judgment and in procedural part, the adjudicating authority who delivered the judgment can exercise jurisdiction while in substantive part it has no jurisdiction. Learned senior counsel for the Petitioner





forcefully contended that doctrine of *functus officio* does not come in the way of exercise of regulatory power of the Commission and it certainly creates a legal bar where the dispute between the parties is of adjudicatory nature.

16. On examination of above contentions of the parties, we agree that the principle of *functus officio* creates a legal bar on an authority to re-hear a case after it has delivered order/judgment in a particular case and it ceases to have jurisdiction over it. However, the above complexities of law, to our understanding are applied by Courts to deal with litigation purely civil in nature and that is not the case here. One of the main functions of the Central Commission is determination of tariff in terms of regulations framed and notified by it. Further, the tariff determination is a continuous process and is not akin to the nature of disputes purely of civil nature with which the Civil Courts deal with day in and day out. We do not agree with the contention of BRPL and BSPHCL that the Petitioner is attempting to reopen the order in petitions where tariff was granted for 2001-04 and 2004-09 tariff periods as the Commission has become *functus officio*. As we observed that one of the prime duties of the Commission is to determine tariff in terms of the notified regulations and it being a continuous process, in deserving cases, the same is required to be revised as provided for in Regulation 92 of 1999 Regulations, which provides as follows:-

“92. The Commission on its own on being satisfied that there is need to review the tariff of any utility shall initiate the process of revision in accordance with the procedure as may be prescribed. The suo-motu review of the tariff shall be the same as set out in Chapter II of these Regulations.”



17. We further agree with the contention of the Petitioner that the power of the Commission to revise the tariff of any utility under Regulation 92 of 1999 Regulations is upheld by Hon'ble Supreme Court in the matter of U.P. Power Corporation Limited Vs. National Thermal Power Corporation Limited reported in (2009) 6 SCC 235. In the said judgment, Hon'ble Supreme Court in para 36 observed that in a case of the nature as their Lordship were then considering, even principles of res judicata will have no application. In view of above discussions, we observe that the principle of *functus officio* is not applicable in the facts and circumstances of these cases.

18. We direct the Petitioner to file the following information in Petition Nos.288/TT/2019, 300/TT/2019, 301/TT/2019 and 305/TT/2019 on affidavit with advance copy to the respondents by 22.11.2019:-

- (a) To ascertain effective tax percentage for the tariff period 2014-19, the details strictly section-wise of Income Tax Act regarding "Total Tax and Interest paid", 'Assessed MAT Income' and Refund of Tax and interest recovered thereon or additional payment of tax and penalty for short deposited tax' duly certified by the Auditor in accordance with applicable Auditing Standards and Implementation Guidelines should be given separately for the 'Tariff Income' and Non-Tariff Income' duly reconciled with Books of Accounts.
- (b) Whether any asset(s) covered in the present petition has been de-capitalized or the asset(s) has not been in use during earlier period? If so, indicate date of de-capitalization, gross block and cumulative depreciation till the date of de-capitalization.

19. We further direct the respondents to file their reply in the respective petitions by 25.11.2019 and accordingly the Petitioner to file rejoinders, if any, by 6.12.2019. The parties are directed to comply with the directions within the specified timeline and no extension of time shall be granted.



20. Petition Nos.288/TT/2019, 300/TT/2019, 301/TT/2019 and 305/TT/2019 shall be listed for hearing in due course for which separate notice will be issued to the parties.

sd/-  
**(I. S. Jha)**  
**Member**

sd/-  
**(Dr. M.K. Iyer)**  
**Member**

sd/-  
**(P.K. Pujari)**  
**Chairperson**

